

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
ATLANTA BRANCH OFFICE

5

LEE BUILDERS INC.

and

CASE 10-CA-33718

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ALABAMA CARPENTERS REGIONAL  
COUNCIL – LOCAL 1274

*Lisa Y. Henderson, Esq.*,  
for the General Counsel.  
*John Wilmer, Esq.*, and  
*Richard Raleigh, Esq.*,  
for the Respondent.

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SUPPLEMENTAL DECISION

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**LAWRENCE W. CULLEN, Administrative Law Judge:** On February 12, 2003, I issued my Decision in this Consolidated Case finding that Respondent Lee Builders, Inc., violated Sections 8(a)(1) and (3) of the National Labor Relations Act. On April 30, 2004, the National Labor Relations Board, upon its consideration of exceptions to the decision filed by Respondent remanded the case to me for further consideration of each of the findings of Section 8(a)(1) and (3) violations with the following instructions:

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1. Provide credibility resolutions on all disputed testimony, considering all relevant factors in making each resolution, specifically identify the witnesses who are credited and discredited, and detail the basis for making each resolution.

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2. Provide the specific factual basis and an individual legal analysis for each finding of a Section 8(a)(1) violation, including:

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(a) the credited testimony that supports each finding of an unlawful interrogation, including the specific statements and circumstances found to constitute the unlawful interrogations(s);

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(b) the credited testimony that supports each finding of threat of plant closure and job loss, including the specific statements and circumstances found to constitute the unlawful threat(s); and

(c) the credited testimony that supports each finding of threat of futility, including the specific statements and circumstances found to constitute the unlawful threat(s).

3. Provide the specific factual basis for each finding of a Section 8(a)(3) violation, with reference to the credited testimony and any documentary evidence relied upon, including:

(a) the basis for finding that employees Christopher Hughes, Bradley Walls, and Daniel Manuele engaged in union activity and that the Respondent had knowledge of Hughes, Walls, and Manuele's union activity;

(b) the basis for finding that the Respondent tolerated the absences, tardiness, and other alleged deficiencies of Hughes and Walls prior to learning of their union activity;

(c) the basis for finding that employee Daniel Manuele was the first and only employee the Respondent discharged for a positive drug test, including specific credibility determinations as to the testimony of Bobby Lee that (i) another employee named John Tillis also tested positive for drugs at the same time as Manuele and resigned the next day; and (ii) there was a change in the Respondent's drug policies that provided for the discharge of employees who tested positive for drugs; and

(d) an explanation of which credited facts support each element of the *Wright Line* analysis.

I accordingly issue the following supplemental decision.

#### The Section 8(a)(1) allegations

Christopher Hughes testified he was hired by Respondent as a carpenter in April 2002. He was a union member prior to his employment with Lee Builders. He had a discussion with Alabama Carpenters Regional Council – Local 1274's Representative Jerry Baker in April 2002. He signed a Union authorization card on April 3, 2002. Hughes testified that in late April 2002, Respondent's Vice President-Owner-Project Manager Bobby Lee spoke to him about the Union campaign while Hughes was working on Bobby Lee's home which was being remodeled. Only Hughes and Bobby Lee were present during this incident. He testified that Bobby Lee said, "It's my understanding that there's a Union campaign going on right now." Hughes answered him, "Yes sir, there is." Bobby said he would do anything legally possible not to go union. Hughes told him that he had been part of the Union before and was pro-union and had not found any faults with the Union. Lee told him he should not believe everything he heard from the Union. Hughes told Lee that he had spoken with the Union representatives a few times and they were talking about him (Hughes) holding a barbecue at his house for some of the employees who were interested in the Union and wanted to hear the facts as to what was being offered. He told Lee he had been hoping to speak with him about the Union and to hear his (Lee's) opinion as he had not been at a company meeting. Bobby

Lee told him he was against the Union and Hughes then told Lee that maybe it was not such a good idea to host the barbeque. Lee also commented that it would be harder for Respondent to compete if the Respondent became unionized.

5 Hughes is a childhood friend of Jason Alger employed by Respondent as a carpenter who introduced Hughes to Bobby Lee. Alger had brought Hughes along to help work on Bobby Lee's house which was being remodeled utilizing some of Respondent's employees on Saturdays and sometimes on Sundays as well. Hughes testified he did not tell Bobby Lee that he had a Carpenter's Union card and cannot recall  
10 whether he told Lee that he was a journeyman carpenter before he was hired by Bobby Lee.

Bobby Lee testified that he met Hughes at his house where they were doing work on a weekend and where his employee Jason Alger was doing work. Alger told Lee he  
15 had a friend that could use extra money and asked if he could bring him (Hughes) along. Hughes did some work at Lee's house. Lee hired Hughes four or five days later. Lee testified that the first day (that Saturday) Hughes worked for him, he told everyone he was from Atlanta and that he was a "journeyman carpenter" which implies that he was a Union cardholder. Lee hired him with this knowledge. Hughes was assigned to the New  
20 Market project after he came to work. In late April, Hughes did not show up for work one day and said he was involved in an accident with employee Larry Moore when they were putting cinder blocks into a Bobcat and one fell out of the Bobcat and hit Hughes in the head leaving a small scratch on his forehead. Hughes showed up at the office later that day and spoke with Lee and told him he could not work with employee Larry Moore  
25 because when the accident occurred, Hughes told Moore to watch it and Moore then told Hughes to watch it or he'd do it again on purpose. Hughes told Lee, if Lee couldn't find him somewhere else to work, he would quit. Lee found other work for Hughes at another project at NASA Building 4705 for a few days which was all the work requiring extra employees. Most of the heavy labor was at New Market which was where Lee needed  
30 employees. Lee assigned Hughes to work on his house renovation after Building 4705. This is not a Lee Builders' project and he had employees working on his house on weekends rather than normal workdays and paid them by his personal checks.

Lee testified that several weeks before he terminated Hughes he spoke to Hughes  
35 about the Union. When Lee found out that the Union was trying to organize Respondent, he went to talk to his employees at various job sites and to Hughes who was working at his (Lee's) house and said that he had heard that the Union was trying to organize and he wanted to give them his views, that Respondent's competitive edge would be potentially hurt and owners (customers) of projects would not want the Union and that Respondent's  
40 business may be hurt. He said that Hughes and the other employees had the right to do what they wanted to do, but if the employees had any questions, he would try to find out the proper information. When Lee spoke to Hughes at his house, Hughes told him he had been wanting to get the employees together for a party to discuss the Union. Hughes said he had been meaning to talk to Lee but if the Respondent was against it, he was against it  
45 and that if he wanted to be in a Union he would go back to Atlanta where he had worked before.

I credit Hughes' version of this inquiry by Lee. I find that Bobby Lee interrogated Hughes by initiating the subject of the Union campaign by stating that he understood there was a "Union campaign going on right now." This was not a mere casual comment but rather was a pointed inquiry designed to probe for information of Hughes' sympathies, participation in union activities and those of his fellow employees. Hughes may have stated prior to his hire that he was a journeyman carpenter which translated into stating that he was a Union member. However, there was no evidence of which Lee was aware that Hughes was an active member of the Union or otherwise involved in the Union campaign when Lee questioned Hughes. Hughes was not an open and active union supporter. Under these circumstances the inquiry of Hughes by Lee concerning his union sympathies and participation and the sympathies and participation of his fellow employees had the foreseeable effect of coercively interrogating Hughes in violation of Section 8(a)(1) of the Act. *Rossmore House*, 269 NLRB 1176 (1984), aff'd sub nom. *Hotel Employees & Restaurant Emp. Union v. N.L.R.B.*, 760 F.2d 1006 (9<sup>th</sup> Cir. 1985).

Employee Dan Manuele testified that he was hired as a carpenter by Respondent on October 13, 2001. He signed a Union card at his house on February 12, 2002. He had earlier met Union Field Representative Jerry Baker. Baker had left his card on Manuele's automobile on the job site. Manuele was working at the Good Shepherd Catholic Church in Huntsville, Alabama. He received some yellow pencils from the Union with the Local Number of the Carpenter's Union. He used the pencil at work. In early May, Bobby Lee asked to borrow the pencil and he looked at it and said, "what's this?" Manuele said, "It's a pencil." Lee asked, "Well, what are you doing with it?" Manuele told him, "Well, I got it from one of the Union reps." Lee then asked Manuele if he had seen the Union representative on the job and he told Lee that they had come to his house and that he had not seen them on the job. Lee told Manuele that the company would never go union and asked if he had signed anything. Manuele told Lee he had signed a Union authorization card. Lee told him they would lose all their "draws" if the company went Union. Manuele told Lee that he worked for Respondent and not for the Union; Lee said they (Respondent) would shut the doors down before they went Union. Manuel testified that carpenter Bill Lemon was present during the conversation with Lee. Lemon denied any knowledge of this conversation.

On rebuttal Respondent's counsel elicited testimony from Bobby Lee concerning a pencil with the Union's name on it. Lee denied that the incident occurred and denied that he had asked Manuele his feelings about the Union. He contended this was totally false and inaccurate. He testified that the first time he found out that Manuele was claiming to be a Union supporter was two days after he was denied unemployment benefits which was about a month after he had terminated him.

I credit Manuele's testimony as set out above. I found his testimony to be specific and clear regarding the incident involving the pencil. I find that Lee's inquiry of Manuele was unlawful interrogation and violative of Section 8(a)(1) of the Act. Notwithstanding Manuele's possession of a pencil with the Union name, there was no

evidence that Manuel was an open and active union supporter such as to meet the standard in *Rossmore House*, *supra*, for permitting an inquiry by the employer for questioning an open and active union supporter. I further credit Manuele's testimony that Lee threatened to shut the doors down before the Respondent would become unionized.

5 This was an unlawful threat of the closure of the business and of the futility of the employees support for the Union. See *Wellstream Corp.*, 313 NLRB 698, 706 (1994); *Dlubak Corp.*, 307 NLRB 1138, 1143, 1152 (1992); see below *Classic Coach*, 319 NLRB 701-3 (1995) and was violative of Section 8(a)(1) of the Act. I do not credit Lee's denial that this incident took place or Lemon's denial of knowledge of the incident.

10 Employee Bradley Walls testified that he was initially hired by Respondent in March or April 2001, as a carpenter. He was laid off (as were several other employees) around Christmas of 2001, for lack of work. He was recalled to work at the Lady of the Valley Church in February of 2002, by a letter from Respondent's Project Manager

15 Harold Carter. He returned to work as a result of receiving the recall letter. Union Representatives including Jerry Baker came on to the job site at the Lady of the Valley Church in Fort Payne, Alabama, and spoke to him. A week or so later the Union representatives came to his home and he signed a Union authorization card dated April 18, 2002. He assisted in the organizing efforts of the Union. There were not very many

20 carpenters on the job. When the Union organizers came on the job the first time, he was the only carpenter on the job site along with some laborers on the job site. Walls asked carpenter Bruce Hill and another carpenter named Roy if they were interested in joining the Union carpenters. In late April, he attended a company meeting held by Project Manager Harold Carter with about six employees out of ten who were on the job site.

25 The meeting was held in the job trailer on the job site. Harold Carter had a notebook he referred to but did not read from it. Carter told the employees that the Respondent "was totally against the Union and that there was no way that the Union was going to get into Lee Builders. He said that Lee Builders would shut the door before they let the Union in." Carter told the employees of his own experiences as a Union carpenter and that he

30 had seen employees fined and jobs shut down because of violations. Carter said that one of the reasons Respondent did not want the Union was "that the main reason, one of the reasons that they rather it didn't go Union was that that could make the prices go up and that they would have to bid higher on their jobs and they wouldn't be bidding on the Union jobs. They wouldn't receive as many bids as they did at the present time being

35 with wages as they were." When Carter started talking about the Union, Walls told Carter that the Union representatives had talked to him and told him they could charge for miles. In response to Walls, Carter repeated that Respondent was totally against the Union and told Walls "that they were totally against the Union and that I needed to let him know if they come up on the job site again, so that they could get the superintendent

40 to make sure that they were escorted off."

On cross-examination Walls testified that Union representatives came on the job site a second time after he had signed the authorization card and greeted him but did not have any discussion with him. He acknowledged that no management representative was

45 present when he asked Bruce Hill and Roy whether they would be interested in signing a Union card. Respondent's counsel asked what Harold Carter had said when he came to

the job site in late April 2002. “And you testified in late April, 2002, Harold Carter came to the job site; is that correct? Yes, sir. Okay. And he said that Lee was against the Union? Yes. And what did he say in that regard, if you can remember his exact words. He said that he was told that Lee Builders would close the doors on the business and shut  
5 the business down before they would go Union.”

The questioning and testimony of Walls are as follows in pertinent part:

10 Q. Was there any discussion about Harold asking y’all to be careful and think about what you were saying?  
A. He said just not to support the Union that there was, you know, that it would cause more trouble than it could help us.  
Q. Did he say don’t support it or did he say in his opinion it was not good for Lee Builders?  
15 A. I’m not sure, sir. I imagine he worded it correctly, I’m sure.  
Q. Well, the point, the question I have is, what is ‘correctly?’ How did – what exactly did he say?  
A. In other words that his opinion was that they shouldn’t join the Union because Lee Builders decided they were not going to – that it would cause problems with Lee Builders joining the Union.  
20 Q. When you say he said he was going to close down the business, did he say that? Did he say it in those exact words? Lee Builders would close down the business; did he say it in those exact words? Or did he say something else?  
25 A. I can’t remember the exact words, but it’s close enough to the exact words that I knew what he meant, and that’s what he meant, okay?  
Q. Well, I’m not – I know you’re a Veteran guy and you’ve been around awhile and so you think you knew what he meant, but I’m really interested in what he said.  
30 A. I think his exact words were something to the effect that Lee Builders would close the doors before they would turn Union.  
Q. Well, how did he say that? What words, exactly?  
A. Approximately what I just said.  
Q. Did he say anything about concern about competition among  
35 general contractors?  
A. Only that they would believe they would have to bid higher on the jobs, you know, to make them spend Union wages.  
Q. And he was concerned that that would hurt him competitively?  
A. Would hurt their business, yes.  
40 Q. And is that what he was saying when you took it to mean he would close the doors?  
A. No, sir, he said they would close the doors before they would go to Union.  
Q. And you’re confident that everybody there heard that?  
45 A. Yes, sir.



Project Manager Harold Carter acknowledged that he addressed a group of employees at the Our Lady of the Valley Church project concerning the Union campaign. He testified he told the employees that Respondent was against the Union, that there were not very many general contractors in the area that were union. He told them of his experiences as a union carpenter and that it had not worked for him as he spent considerably more time on the bench (waiting for work) and that he had to get his own jobs as the union business agent never got him a job. Carter denied saying that if Respondent was organized it would go out of business or shut the doors or anything to that effect. He did tell the employees that if Respondent became a union employer or were "forced" to be a union contractor, it may affect how we are in the bid world.

I credit the testimony of Walls over that of Carter and find that Carter did tell the employees at the meeting attended by Walls that the Respondent would shut the doors if it were organized by the Union. I found Walls' testimony to be specific and clear. I find that the threat that Respondent would shut the doors was a threat of closure and of the futility of the employees' support for the union, inherently coercive and violative of Section 8(a)(1) of the Act. *Wellstream Corp., supra; Dlubak Corp., supra; Classic Coach, supra.*

Former employee Gary Watkins testified concerning remarks made by Project Manager Vice President Owner Bruce Lee at a meeting held by Lee wherein Lee expressed his views of the Union campaign. The meeting was held at the Hazel Green Baptist Church. Watkins testified that Bruce Lee told the employees at the meeting held on May 9, 2002, that the Union would put Respondent out of business because they would not be able to compete around the Huntsville, Alabama area. Watkins had been working as a carpenter for a brief time commencing in April of 2002. He was recalled to his former employer from layoff. Watkins also testified that a few days after the meeting held by Bruce Lee, he (Watkins) wore a Union tee shirt that said "Vote Union" and that superintendent Sean Lee who is a grandson of Jack Lee, a nephew of Bobby and Bruce Lee and the son of Jeff Lee, told him he could not wear the tee shirt to work. He told Sean Lee he did not have any other shirt to wear and Sean Lee said not to wear it any more.

Bruce Lee testified that he went to three job sites at which he had ongoing projects and spoke to the employees concerning the Union campaign, including the Hazel Green Baptist Church meeting, which was attended by Watkins. Bruce Lee testified that he said essentially the same thing at each job site. He testified, "I told them that I felt like that if the Union did come in and take on our labor force, that it would hurt our chances of getting competitive jobs and I felt that it would – it – it could create problems for us doing the type of projects that we're doing." "I - I just basically just said that I felt like the - the owners or the type of people that we work would probably rather use a non-Union type set up." He testified he did not tell the employees how to vote. He told the employees to be careful of what they signed as it could obligate them to things they were not aware of. He denied saying or implying that Respondent would close its doors or shut down if the Union successfully organized Respondent.

Superintendent Sean Lee testified that he supervised Gary Watkins when he worked at Hazel Green Baptist Church in April and May 2002. He denied that Gary Watkins ever wore a Union tee shirt or that he (Sean Lee) had told Watkins that he could not wear it on the job. At one point Watkins came to him and said the next day would be his last day as he (Watkins) needed to return to his old job. Sean Lee further testified concerning the meeting held by Bruce Lee with the employees on the Hazel Green job site. Sean Lee testified that Bruce Lee told the employees that the Union was trying to organize Respondent's employees and that Respondent was not in favor of this and to be careful of what they sign before signing. Sean Lee testified that Bruce Lee did not tell the employees that the Respondent would shut the doors if the Union came in. Nor did Bruce Lee say anything that could be construed as that.

I find that Respondent violated Section 8(a)(1) of the Act by the threat that the Union would put Respondent out of business. I credit the testimony of Watkins over that of Bruce and Sean Lee that Bruce Lee used this terminology rather than the version testified to by Bruce Lee that he believed the successful organizational campaign of the Union would adversely affect the Respondent's ability to obtain successful bids for work. I find the version testified to by Watkins is the more likely version and is consistent with the above findings of the threatening statements of closure issued to employees by Bobby Lee and Harold Carter. I make no determination concerning the testimony of Watkins and Sean Lee about the Union tee shirt as this was not alleged as a violation of the Act.

In summary I find that the credited testimony of Christopher Hughes supports the finding that Bobby Lee unlawfully interrogated him concerning his union activities and sympathies and those of his fellow employees. I find that the testimony of employee Daniel Manuele supports the conclusion that Bobby Lee unlawfully interrogated him concerning where he had obtained the pencil with the Union's name on it and concerning whether he had seen the Union representative on the job and whether he had signed a Union card. I find that the credited testimony of Bradley Walls supports the conclusion that Project Manager Harold Carter unlawfully threatened the employees at the meeting attended by Walls that the Respondent would close the doors to the facility if the employees chose union representation. I find that the testimony of former employee Gary Watkins supports the conclusion that Project Manager Vice President and Owner Bruce Lee unlawfully threatened plant closure if the employees chose union representation. I find the testimony of Daniel Manuele supports the conclusion that Bobby Lee unlawfully threatened the futility of the employees' selection of the Union by his statement that the Company would never go union and would shut the doors down before they went union.

#### The Section 8(a)(3) allegations

Christopher Hughes testified he was hired in April of 2002, as a carpenter. He had the conversations with Bobby Lee as set out above concerning the Union. He was working on Bobby Lee's personal home. Hughes testified that on his last week of employment, he worked 60 or more hours. On Saturday, May 4<sup>th</sup>, when he had agreed to work, he arrived for work at Bobby Lee's house at 9:00 a.m. instead of the normal



starting time of 7:00 a.m. as he was “trying to rest up a little bit . . .” as he had “put in a bunch of hours over there . . .”. He testified that there had been a relaxed atmosphere at the worksite. When he arrived late for work he met employee Patrick Gilstrap who told him that Bobby had left a message, that since he was not there on time, to take the whole day off. He made a joke to Patrick that he would go home and take another nap and drink a cold one for him. He went out of town that Sunday and returned late that night to the house he was boarding in with Jason Alger and his wife who were asleep. On Monday morning Jason told him that Bobby Lee had called about 6:30 to 7:00 p.m. on Sunday evening and that Bobby Lee told Jason that Hughes should look for another job. Hughes went to the jobsite at Bobby’s house that morning but no one was there. He then went to the office, waited twenty to thirty minutes and left because the person in the office told him that Bobby would not be getting there until later that morning. He was finally able to speak to Bobby on Wednesday of that week in Bobby’s office. Hughes testified that he told Bobby that he appreciated the time he had been with the Company and that Bobby told him he was a liability. The previous Wednesday was the day when Bobby had stopped by that evening and brought up the subject of the Union campaign. Hughes testified he had never been warned that his job was in jeopardy because of his attendance. He had been praised for good work on Gary Lee’s job and on Larry Shipman’s job. He had been involved in an incident with carpenter Larry Moore, at the New Market School when he and Moore had been putting cement blocks into a Bobcat bucket and one of the blocks fell out and hit him in the head. Moore asked him if he was all right and he sarcastically said that he was “great” or “peachy” and Moore then said the next time he would do it on purpose. Employee Bill Lemon testified that the block that fell out and hit Hughes had been put in the bucket by Hughes. Hughes met with Bobby the next day and told him he could not work with Moore. Lee assigned him to two other job sites where they only needed a little help and then subsequently moved him over to the renovation job on his (Bobby’s) house. Hughes testified that he had never been disciplined by the Respondent as a result of this incident.

On cross-examination he testified that he had been referred to Respondent by his long time friend Jason Alger and was at that time living in Alger’s home. Alger introduced him to Bobby and Bobby hired him in late March, 2003. He was often the only person working at Bobby Lee’s house during the workweek. On the weekends other employees would work on the house as well. He missed a few (one or two) days working at Bobby Lee’s house. On one occasion he had a flat tire and Alger came from the job site to bring him a spare tire and he took the rest of the day off to fill out a police report for an accident as someone had sideswiped his truck. He believes he called Bobby and asked if he could do so to take care of a few things. He also missed a day in the New Market job when the water pump froze on his truck. He estimates that he missed three or four days throughout his entire employment. He missed another day at Bobby’s house. He believes he called and spoke with someone every day he missed, and that 90 percent of the time he talked to Bobby. Most of his absences were transportation related and involved not having a way to get to work. He testified that Bobby Lee had never complained about his missing work. He acknowledged that he and Alger had some conversations about his missing work and having money to pay his rent. When Alger told him of Bobby Lee’s phone call, he told Hughes that Bobby said, “he can’t deal with

this shit.” On redirect examination he testified that he had never been a “no-call-no show.” Alger is still working for the Respondent although he failed a drug test. On redirect examination, Hughes identified a time sheet (Respondents Exhibit 2) which indicates he missed work on April 3<sup>rd</sup> about a week after he commenced work for Respondent. This was the same date he met with the Union. Hughes contends this was a coincidence as his absence was transportation related and the Union came by his residence.

Alleged discriminatee Bradley Walls testified he was initially hired by Respondent in March or April 2001. Walls was a carpenter. He was laid off around Christmas of 2001, for lack of work. He was recalled to work by a letter from Project Manager Harold Carter, dated February 18, 2002. He went back to work for Respondent at Our Lady of the Valley Church as a result of the letter. During his employment with Respondent, representatives of Carpenters Local 1274 came on that job site and spoke to him. A week or so later they came by his house and he signed a union authorization card on April 18, 2002. He assisted in the organizing efforts of Respondent’s employees by asking fellow carpenters Bruce Hill and Roy if they were interested in joining the Union. He attended a meeting held by Project Manager Harold Carter with other employees where Carter was delivering an antiunion speech to the employees. He told Carter at the meeting that Union representatives had come on the job and talked to him. In response Carter emphasized again that Respondent was against the Union and that Walls needed to let him know if they came on the jobsite so that he could get the superintendent to escort them off the jobsite.

On May 16, 2002, Walls called in sick because he had a sinus headache and dizzy spells. He initially attempted to call the job superintendent Rymon Sparks on his (Spark’s) cell phone before 6:00 a.m. and tried unsuccessfully once or twice more to get hold of Sparks. It was about 7:00 or 8:00 a.m. after the start of the workday before he was able to get hold of Sparks. He told Sparks he was sick. Sparks said he knew because laborer Donald Simms whom Walls rode with, had told him that Walls was sick. Sparks said, “All right. I guess you’ll be here tomorrow.” Simms came by Walls’ house later that day and told him that Sparks had told him that Walls needed to come by and get his check as he had been terminated. Walls called Sparks the next morning and asked why he had been fired. Sparks said he had been out too much and that “it had come from higher up,” and that he (Sparks) had nothing to do with it. Walls testified that he had worked well with Sparks before. He told Sparks his discharge was not right and that he had not been out that much. He testified that he had only been out one day before this on the Our Lady of the Valley Church and that he had called in on that occasion. Walls testified that another employee Bruce Hill was absent during that period and that he had recommended to Sparks that Bruce Hill be sent home for drinking and that Bruce had been out numerous times. He asked Sparks why he was getting rid of him and keeping Bruce. Sparks told him it came from higher up and there was nothing he could do. Prior to his termination he had not received any write-ups about his absences. He acknowledged that “they tell you every time you’re out ‘we need you here’ but other than that no (disciplines) . . . .”

On cross-examination he testified he is a good skilled carpenter. He denied that he had been terminated on the Geraldine project in 2001 for no shows and not calling in. He denied having showed up for work after spending the night drinking beer. He admitted to having missed work for some Court dates for child support and for driving under the influence of alcohol and driving with a suspended license. On these occasions he told Respondent ahead of time and showed the court papers. He denied missing work three times in the week that ended April 18<sup>th</sup> of 2002. He does not recall whether he missed work on May 1<sup>st</sup>, 2002. If he missed work for any other reasons than those he has testified to, it would have been for rain days. On the second occasion that the Union representatives came on the job site, it was after he had signed his Union card. On that occasion they merely said “hi” to Walls and talked to Phil Sparks but did not otherwise talk to him (Walls). When the Union came to his home, he transferred his Chattanooga Local Carpenters Union membership to the Carpenters Local in Decatur, Alabama. Walls further testified on cross-examination that he does not recall having missed work on April 30, 2002 and denied that having come in after the missed day, that Rymon Sparks told him in front of all the employees that if he did another no-show and no-call, he would be terminated.

Dan Manuele testified he was hired by Respondent on October 13, 2001, and did everything from using his commercial driver’s license to scenic work. He met Carpenters Local 1274 representative Jerry Baker on the jobsite at Good Shepard Catholic Church in Huntsville, Alabama. He signed the Union card on February 12, 2002. He received some yellow pencils from the Union after speaking with the Union. The number of the Carpenters’ Local Union was printed on the pencil which he used at work. In the early part of May 2002, Bobby Lee asked to use his pencil and when he went to use it, he said, “What’s this?” he said, “It’s a pencil.” Lee asked, “Well, what are you doing with it?” he said, “Well, I got it from one of the Union reps.” Lee asked if he had seen them on the job and Manuel said, “No, sir.” “. . . they came to my house. I did not see one on the job.” Lee told him, “this company would never go Union and he asked me if I had signed anything and I said, yes, I had signed an authorization card.” Lee said they would “lose all their draws if the Company went Union.” Lee said, “they’d shut the doors down before they went Union.”

Manuele testified he also discussed the Union with supervisor Wayne Wright at break time at a restaurant near the New Market job site when they were there. It was on the same day he (Manuele) had his accident. Manuele asked Wright what he thought about the Union. Wright said, “he used to be in a union and the Union was a good thing.” He said you’d get a lot more benefits with the Union and that it was a good organization. Wright also told him that he was getting a lot of pressure from Bobby Lee about his performance and that he never could satisfy him and was thinking about joining the Union. Wright also told him that “one of the reasons why Chris (Hughes) got fired [was] because he signed an authorization card.”

Manuele was involved in an accident at the New Market School jobsite when the scaffold broke. He was injured but continued to work the rest of the day. He missed approximately three weeks work as a result of this accident commencing the next

afternoon. Eleven or fourteen days later he was required to take a drug test. The doctor called him approximately two to three weeks after he had gone back to work and told him they had found traces of “THC” (marijuana) in his system. The doctor asked him if he was taking anything else and he told him he was taking “Stacker 2’s” which he testified is a type of vitamin in juice, which is bought over the counter. He returned to work around the beginning of May. When he received the report from the doctor he called the office manager who told him to go back to Bobby. Bobby Lee came out to the job the next day to check with him and asked him what had happened. He told Bobby that they had found traces of THC in his system and that the day after he was hurt, he was in a lot of pain and “took a couple hits of a joint” (marijuana). Afterward Bobby called him and told him to go back to work and we’ll see what we can do about this. Bill Lemon was present during the conversation and told him not to worry about it because he (Lemon) had failed the drug test years ago. Lee did not terminate him that day because of the drug test result. Manuele did not receive any discipline as a result of the drug test result. Manuele was involved in another accident when he was using a saw and the saw locked up on him and cut another employee. It was a faulty saw and he (Manuele) did not receive any sort of discipline as a result of the accident. After his accident he moved to the Good Shepherd job site and worked with Bill Lemon, a carpenter. He subsequently was moved to Bobby Lee’s house and Bill Lemon went with him. The job at Good Shepherd had been completed when they moved to Bobby Lee’s house. On his last day of work Manuele was at work on time and asked Bobby Lee where Bill Lemon was. Bobby told him that Lemon had moved to another job site which was starting. He asked Bobby if he wanted him to report to that job site and Bobby said, “No,” I no longer need your services.” Bobby said his (Manuele’s) time was up, but gave him no reason. Prior to the day he was terminated, he had not received any complaints about his work performance.

On cross-examination Manuele admitted he had signed Respondent’s policy about the control of drugs and alcohol, and identified his signature of October 22, 2001, on the document. The policy provides for the removal of employees from the workplace who are found to be under the influence of illegal drugs. Manuele was shown a copy of Respondent’s Exhibit 1, which is the first report of the injury form and shows the date of the accident as having occurred on April 8, 2002. However Manuele testified that this date is wrong as the injury actually occurred on April 4, 2002, and he was already at home in bed on April 8, 2002. Respondent’s Exhibit 4 is the paperwork for the test and shows that Manuele took the test on April 11, 2002. Manuele denied that he offered to “sell pot” to Bill Lemon or any other employee on the job. He denied telling Bill Lemon that he had been terminated because he failed his drug test. He denied having told Jason Alger that he was terminated for failing his drug test. He denied having ever told anyone that he had been terminated until he was actually terminated.

The Respondent relies on the testimony of several witnesses including Bobby Lee. Lee testified that Hughes was terminated for “not showing up for work on four of the last ten days he worked for me.” “Coupled with his lack of performance in showing up was his lack of skills as a carpenter, but it was mainly due to the fact that he wouldn’t show up for work.” He testified there were no other reasons. Bobby Lee testified that Manuele was terminated because he was involved in a couple of accidents and failed a

5 drug test. “We had problems with his performance and right at the time that we found out that he had tested positive, on top of that, he no-showed. Well, he left early that day of a big pour and didn’t show up the next day and put us in a bind trying to get ready for a concrete pour out of New Market. But primarily because he failed the drug test, and was involved in two accidents out there in the two-week period.”

10 Bobby Lee testified that he was not aware of anyone else who tested positive after an accident and so he has not terminated anyone else. Lee testified that the practice of requiring drug tests for employees who have work accidents has existed for approximately two years as Respondent wanted “a safer work place and I believe the workmen’s comp carrier requested us to do so.” To his knowledge testing has been done in all cases since they started doing them where there has been an injury to a person. Manuele was tested following his injury. He learned of Manuele’s test results from bookkeeper Peggy Patterson who told him she was called by the doctor who performed the test and that Manuele had tested positive for amphetamines and marijuana. He told 15 Manuele that “we had got the drug test back from his accident, and that he had tested positive for amphetamines and marijuana, and that I thought it was in our best interest, due to the liabilities of having somebody working with us that was doing drugs that we terminated him, and I gave him a two-week notice.” Lee testified that Manuele said that the amphetamines were “Stacker two” a weight loss drug but that Manuele did admit to smoking marijuana. He also mentioned to Manuele as reasons for his termination that this was the day that “he had laid out of work at New Market.” Additionally the superintendent, Gary Lee had spoken to Bobby Lee about concerns with Manuele’s job performance as he did not feel that Manuele had the skills of a carpenter, which was the position he was hired for. Manuel was basically a carpenter’s helper. The combination of all these things and his late show on this day at ten or eleven a.m. were the reasons he decided to terminate Manuele. Bobby Lee testified that he gave Manuele a two-week notice to give him a chance to find another job as he said he had children to take care of. Manuele said he would like to stay and would change Bobby’s mind. Bobby Lee denied 30 having any knowledge that Manuele was organizing or had engaged in any kind of union activity. He testified that he only heard that Manuele had engaged in union activities two days after Manuele lost a claim for unemployment, which was a month after his discharge. Bobby gave Manuele a two-week notice. After two weeks he asked Manuele if he had found another job. Manuele told him he had something working, but did not have it yet. These conversations occurred in the presence of Bill Lemon. After three and a half weeks, Manuele did not appear to be looking for a job and Bobby Lee told him that two weeks had become three and a half weeks and that at the end of the week would be his last day. Manuele told him if he would pay him for the day, he had another job and would just go to it. So they went to the office and he wrote Manuele a check. Two or 40 three weeks later Bobby Lee had a voice mail on his pager from Manuele, which said, “Hey, I need to talk to you. I want to know what you’re going to say about unemployment. I’ll call you back.” Manuele did not call him back. Respondent received a form to fill out for the unemployment claim and Bobby Lee filled it out saying that due to the combination of accidents, the failed drug test and poor performance, we let him go. 45 Manuele called back “two weeks later, really hot, cussing, all mad at me because he got denied unemployment and I said, Dan, I said, all I did was fill out the truth.” “I said



you've got a job." He said, "Well that job fell through." Two days later Respondent was served with the unfair labor practice charge that he was terminated because of union activity. John Tillis the employee, who had been injured in the work accident involving the grinder with Manuele, tested positive on the drug test and quit the next day because he had failed the drug test and thought he would lose his job. After the accidents at New Market Elementary School, Manuele was transferred to the Good Shepherd Catholic School and when that job was finished, Bobby Lee used him at his house a couple of weeks until Lee told him it was his last day. Lee attended the unemployment hearing and Manuele did not state at the hearing that he was fired for union activity.

Bobby Lee testified that he initially met Chris Hughes when they were doing some work on his house on a weekend and employee Jason Alger said he had a friend that could use some extra money and Hughes came and did some work on his house. Lee gave Hughes a job four or five days later. On the first day that Saturday that Hughes worked on Lee's house he told everyone that he had come from Atlanta, and was a journeyman carpenter and that he was a Union cardholder. Lee hired Hughes, notwithstanding Hughes' statement that he was a Union carpenter. Hughes was assigned to work at the New Market job site until late April when he did not show up for work and showed up at Bobby Lee's office mid-day. Hughes said he was involved in an accident with Larry Moore, that Moore had thrown a block into a Bobcat which fell out and hit him (Hughes) in the head, and that Moore had told him, if he did not watch it, he was going to do it again and therefore Hughes did not want to work with Moore. Hughes said that he would quit if Lee could not find him someplace else to work. Lee assigned Hughes to NASA building 4705 jobsite for a few days and then to his house. He had Hughes assigned to his house every day during the week and Lee would go by there once or twice a day and discuss the next day's work. Hughes' attendance was extremely poor, "Late almost everyday and missed four of the last ten days, just did not show up or call." On a Thursday, nine days before Lee terminated him, he had some work lined up on another job and Hughes no-showed, and did not call until that night and said that he had been in an accident and was at the courthouse talking to the police all night and was tired and wasn't able to make it into work because he did not get in until about one (a.m.) and would be there the next day, a Friday, when he no-showed again. About ten or eleven (a.m.) Hughes came to Lee's office and said he had a flat tire and needed some money to get another tire and would be there a little after noon. Lee paid him for one day's work and Hughes said he would meet Lee at one o'clock as Lee had some work that needed to be done prior to a subcontractor coming that weekend. Hughes did not come in the whole day. The following Monday he met with Hughes and said, "Chris that's two days in a row. You're not showing up, you're not calling me, its' putting me in a bind. I had to go down to Good Shepherd to do the work that you were supposed to do". "I told him if he did it again I was going to fire him." Later that week on Friday afternoon Hughes was doing some work and Lee went by there and Hughes said, "Well, I'll just finish this in the morning." Lee said, "So you're working tomorrow (a Saturday)" and Hughes said, "Yeah, I'll be here." I said, "Well I'll see you at seven." He said, "All right. See you at seven." "And then he no-showed again." At about nine-thirty or ten (a.m.) Lee went to the store to get some materials. Lee told Pat Gilstrap, another carpenter who was working for him, that if Hughes showed up to tell him he does not need him and "if he



shows up, just tell him I don't need him. I told him if he laid out again he was gone." Lee called Hughes at his home that Saturday, Hughes was out and Lee told Alger to tell Hughes that he "had warned him, not to bother coming in, if he needed to talk to me, call me." The following Thursday, Hughes came to get his check and apologized for not coming in, said he had a busy week and was tired and overslept and he was sorry things didn't work out but he appreciated working for Lee. They shook hands and left it at that. Although he was aware that Hughes had informed him that he was considering hosting a barbeque for employees interested in the Union, this occurred several weeks prior to the termination of Hughes and the discharge of Hughes by Respondent was not motivated by Hughes' union activities.

The Respondent called Larry Moore as a witness on its behalf. Moore is a working carpenter foreman employed by Respondent. He learned from Manuele that Carpenter Union representatives had come to the Good Shepherd jobsite but Moore was working at the other end of the building from where Manuele was and he did not see the Union representatives. He had not asked Manuele anything about the Union or his sympathies toward the Union. He described Manuele as sloppy and a poor carpenter who was late for work and would sometimes "go into a little fit of rage and leave, and one or two days sometime he was gone and then probably the third time that he had threw a fit with me and left the job early. And I think I worked with him one time after that, he was off for a couple days. He didn't even come back to the job; he was transferred."

Moore also testified concerning Chris Hughes who he had worked with on the New Market job site. Hughes was a carpenter helper. "On one occasion was two of us loading in the bucket from the footers and he (Hughes) came in and started loading in the middle between us but there really wasn't any room. . . . in the course of loading the thing, a block or a piece of block was put in the bucket and it rolled back out . . . and hit him on the side of the head." Hughes became angry and went to his truck. He does not remember if Hughes came back to work that day. The other person helping to load the bucket was Bill Lemon. He denies having told Hughes that maybe next time he (Moore) would do it on purpose. He never had any conversation with Hughes about the Union or asked him whether he was for or against the Union. Nor did he hear anyone else ask him about the Union. He often scolded Hughes about being late for work. On occasion Hughes would tell him that he had partied too hard the night before. Hughes smelled like a brewery and he "would get on to him about coming in with a hangover."

Moore recalls Bobby Lee coming to the job site and speaking about the Union with the employees. He does not remember what was said at the meeting. "Well, Bobby said something about he's going to tell us what he thought about the Union. . . . They was coming around to all the employees sensing our views." Lee did not say that if the Union came in the company would close its doors or anything like that. He also remembers a meeting at which Jack Lee (the owner and president of Respondent) spoke about the Union several months ago (prior to the hearing), spoke about the organizing campaign of the Union. Jack Lee did not say that if the Union came in the company would close its doors.

On cross-examination Moore testified that he has been employed by Respondent for over ten years. He may have worked with Manuele for a total of one month. He testified that Manuele was late for work every day. Moore received an uninvited home visit from the Union organizers.

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Respondent also called carpenter Bill Lemon in its case. He worked as a carpenter at New Market with Hughes. He was the other participant in loading under – block pieces in a Bobcat bucket. He observed Hughes (who was in a hole removing the blocks) throw a block onto the bucket and it rolled off and hit Hughes in the head. He observed Hughes and Moore get angry with each other over the incident. Lemon testified that Hughes was usually ten or fifteen minutes late and on other occasions failed to show up at all. He also left work early.

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Lemon also worked on the Good Shepherd job with Manuele. Manuele never talked with him about the Union, he never asked Manuele about the Union; and he never heard any supervisor or manager ask Manuele about the Union. He does not remember any conversation about a Union pencil nor where Bobby Lee asked Manuele about a Union pencil or where Bobby said the company would shut down before it went Union. Nor did Bobby Lee say anything like that around him. He never heard any discussion of a Union authorization card by Manuele. He did not ever see Manuele engage in Union activities. Manuele did say he had talked to the “Union people” on the telephone a couple of times. Manuele did try to get him to join the Union. Manuele wanted “to know if I was going to join the Union and I told him I wasn’t interested in that.” He also talked about meetings the Union had once a week. He did not tell this to anyone else. He was present when Bobby gave Manuele a notice of termination. “Well Bobby told him that the New Market job they were missing time, the second injuries that happened and that he had failed a drug test when he went in to get the paperwork out on him. And then he said that his insurance was going to be, you know, if he did not keep him straightened more out that he’d have to let him go.” Manuele said, “he’s got some kids and Bobby told him, he said, well, he’d keep him around another week or two until he found another job.” Manuele told him (Lemon) that he had failed the drug test. Manuele had talked to him before about drugs asking him if he and “Billy” would buy it from him and he (Lemon) kept his distance from him. Once before Hughes was talking about selling marijuana when he first met him at the New Market job. After Bobby Lee gave Manuele the termination notice, Manuele was late during the next week and a half when he worked with Lemon. Bobby came by one day and sent Manuele to another job and this was the last he saw of Manuele. During the time he worked with him, Manuele kept asking Lemon about his (Manuele’s) job status. He (Lemon) was contacted by a Union representative on the phone who asked if he was willing to join the Union and he told him he was not interested and hung up on him. Toward the end of that week the Union representative came by the Good Shepherd job site and wanted to talk. Lemon told him he was not interested. The Union representatives called him a couple times at the house, and he finally agreed to have the Union representatives come to his house to get it over with. (Lemon signed a Union card).

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He heard Hughes talk about the Union on the first day he met him when Hughes said he had been in the Union before. He did not hear of him trying to organize the Union. He never observed any member of management ask Hughes about his union sympathies or affiliations. He (Lemon) was never asked about his union activities or sympathies by anyone from the Respondent. He never heard anyone making promises of benefits or threats concerning the Union. He was present when Bobby Lee gave a speech at a worksite about Respondent's position on the Union. They wanted all the employees to be at a meeting to be held at the office; "they wanted all the employees to be there because they wanted to put all the cards on that table so we could have all the information to make an intelligent decision about what all was competitive." He told them to vote their conscience. He did not say the company would close if the Union came in. He did not make any threats or promises if the employees voted one way or the other. He was present when Jack Lee gave his speech to employees. The bottom line was for everyone to vote yes or no. No one in the company said the company would close if the Union came in.

On cross-examination Lemon testified he signed a Union card a month after the Union representative came to the Good Shepherd job site. His Union authorization card was signed on April 23, 2002. He himself failed a drug test years ago while working at the Respondent but he was not fired. He did not buy any drugs from Hughes or Manuele. He (Lemon) did not have any attendance problems. On several weeks he worked less than forty hours which he attributes to rain.

Respondent called Jason Alger as a witness on its behalf. Alger is a boyhood friend of Chris Hughes and introduced Hughes to Bobby Lee who hired him as a carpenter, after he worked on his house for a brief period of five days. Alger is a carpenter who has worked for Respondent approximately seven years. Chris Hughes needed help with a vehicle for transportation and was not happy where he had been staying and moved in with Alger and his wife. Hughes had been a union carpenter in Atlanta. A month prior to the weekend he introduced Hughes to Bobby Lee, Alger had asked Lee if they were hiring and told him he had a friend that had been in the Carpenters Union and had moved to the area from Atlanta. Lee told Alger to have Hughes fill out an application and if he was hiring, he would look at it. Alger brought Hughes to work that weekend and Lee hired him and put him to work. When he told Bobby that Hughes had been in the Carpenters Union, Bobby did not say anything negative. Hughes was assigned to work at the New Market School. Alger was assigned to the 4705 building at the NASA work site. Hughes told him he had personality problems with Larry Moore and told him of the incident when the block fell out of the Bobcat bucket. The following morning after the incident, Hughes did not go to work and said he would not work on the same job site as Larry Moore. Alger told him to call Superintendent Gary Lee to fill out an incident report and at least talk to Bobby Lee about placing him on another job site. Hughes said he did that and told Alger that Bobby was going to put him on the same job as Alger for a couple of days and then would probably have him work on Bobby's house after that if he had nowhere else to put him. The Building 4705 job did not have enough work for more than this period. Hughes did not go to work every day he was assigned to work at Bobby's house. On one day Hughes called Alger's superintendent and told him

that he had a flat tire on his way to work and needed assistance and was walking toward where he lived at that time and Alger left work to bring him a spare tire from his (Alger's) truck which also fit Hughes' truck. He picked him up and put the tire on and Alger believed he was going to work. Alger saw him that evening and asked if he had  
5 gone to work. Hughes said he had gone by Bobby's house and did not find anyone there and went to the office to pick up his check from previous work, Bobby thought he was going back to Bobby's house to work. Instead he went and got a new set of tires. On another day Hughes had been in a minor accident in the evening and spent time to go to court. Hughes took the whole day off to do that. Alger testified he told Hughes that  
10 attendance was important and was important to him (Alger) because Hughes was staying with him and paying bills and if he did not work, he would not bring in the money and would not keep his job. Alger also did not want Hughes to make him (Alger) look bad for having recommended him for hire. There were other times that Hughes missed work and Alger was advised by his wife that Hughes had shown up early and then he would  
15 ask Hughes who would only tell him he had missed work if he asked. Hughes would say he had other things to do and they will just have to understand. Alger testified that in a ten-day period Hughes missed three or four days. Alger testified that Hughes was supposed to pay \$50 per week for staying there and to help with groceries and utilities but did not maintain this very well. On the day Alger helped him change his flat tire, Hughes  
20 did not go to work but said that after getting tires there was not enough time left to make it worthwhile to go back in. Hughes is no longer living with him.

Alger testified Bobby Lee called on a Sunday afternoon looking for Hughes and he told him that Hughes was not there. Lee said, "due to what's going on and happening  
25 tell Chris that I can't keep him at work anymore. I need to have somebody I can depend on to be here at work when I need him." Bobby Lee was referring to the Saturday before that Sunday when Hughes did not show up until nine-thirty or quarter to ten. Bobby did not say anything about missing work on a Sunday. Alger relayed the message to Hughes. He also told Hughes he did not blame Bobby and that he (Hughes) was going to have to  
30 change the way he worked. Hughes later told him that he went to the office and picked up his paycheck and went to the bank to cash it. Hughes did not tell him why he thought he had been fired. Nor did he say anything about being fired for Union activity.

Alger worked with Manuele for two or three days on a Thursday, Friday and  
35 Saturday at South Trust Bank in Madison before Manuele left the New Market job. He talked to Manuele who was calling Hughes. Manuele told him that he had been given a two-week notice to look for another job because he had failed the drug screen when he went to the doctor. Manuele did not say anything else. Alger testified that he himself had failed a drug test in 1999 and was not terminated. He tested positive for marijuana.  
40 He was told not to make a habit of it as it could affect his future employment.

Respondent also called Pat Gilstrap as a witness on its behalf. Gilstrap had been employed by Respondent for six years as a carpenter/foreman. He worked with Hughes at Bobby Lee's house as the lead carpenter. Hughes was "supposed to have been the  
45 carpenter there" but his skills were not up to par. He put things in the wrong way and his work had to be redone. He never observed Hughes engage in any Union organizing

activities. There were three or four occasions when Hughes did not show up on the jobsite at Bobby Lee's house. They were scheduled to work on a Saturday. Bobby had a list of who was scheduled to work and what needed to be done and Hughes did not show up. Hughes was supposed to be there at 7 a.m. and did not show up until between 10 and 11 a.m. Bobby left to get some material before Hughes showed up and told Gilstrap that if Hughes showed up, tell him not to bother with it and to see him on Monday in the office. He never saw Hughes working on the job site after that.

Gilstrap also worked with Dan Manuele on Bobby's house. Manuele was a carpenter. He showed up for work on time but on numerous occasions he had to leave the job site for various personal reasons and one day to go to an interview. Manuele told him that Bobby had given him a limited time to work and he was trying to find another job. No one from Respondent ever said in his presence that if the Union came in the company would close its doors. On one day everyone went to the main office and Respondent's management informed them of the Union organizing and said they could not say certain things because of legal reasons. They said they wanted to keep it a family business and even if the Union was voted in, they would keep the doors open.

Respondent called former employee Wayne Wright as a witness in its behalf. Wright had been a superintendent working for Bobby Lee at New Market and Good Shepherd job sites. He worked for Respondent from July 1996 to April 2002. He worked with Manuele at Good Shepherd and New Market. He was aware that the Carpenter's Union was organizing at Respondent. He recalls one time when Union representatives came to the Good Shepherd job site. They passed their cards out, stayed about ten or fifteen minutes and left. They told him who they were and left. They didn't pay particular attention to any person out there. He did not ask the Union representatives to leave the job site but let them know that an unofficial break was costing Respondent money. On an occasion Dan Manuele asked him about the Union and they discussed the opportunities. He told Manuele the Union was a good thing if he could get in and stay. He never interrogated anyone about their Union affiliations. Nor did he ever tell anyone that the company would close its doors if the Union came in. Nor did he ever hear anyone from management say that to him. He did not tell Manuele that one of the reasons Chris Hughes was fired was because he signed a Union card. He was no longer employed by Respondent when Hughes was fired. He does not know why Hughes was fired. There was no occasion when he and Manuele were sitting in a company truck that he told him that Hughes had been terminated because he supported the union. He never saw Manuele or Gary Watkins engage in any Union organizing at Respondent or saw them wear Union tee shirts or hats or anything like that. Nor did he hear of this from anyone else. He never told anyone that Manuele had asked him about the Union.

Respondent called Project Manager Harold Carter on its behalf. He talked to a group of Respondent's employees in Fort Payne, Alabama, at the Lady of the Valley project and in Hanceville, Alabama, at a project called Wallace State College. Brad Walls was one of the employees he talked to in the group at Our Lady of the Valley. He told the employees that Respondent was against the Union and in his opinion there were not very many general contractors in the area that were Union and he told them he had



been in the Union and it did not work for him. He told them that if the Company were Union, it might adversely affect its ability to compete for work. He did not ever say that if Respondent were organized, it would go out of business or shut the doors or anything to that effect. He told them “that if – if we were forced to be, if we – if Lee Builders  
 5 went Union as being one of the only generals that weren’t, that it may affect how – how we fared in the bid world.” He instructed his superintendents that Union representatives were not to be allowed on the project during working hours, which would cause the jobs to be delayed. He did not tell them that they were not to approach his employees in parking lots or on their break times.

10 Carter supervised Brad Walls on two school projects being performed simultaneously in Geraldine, Alabama and Sylvania, Alabama in 2001. Walls was a good worker but would consistently “no show” at the most inopportune times. He terminated Walls (sent him home) twice in 2001 but a few days later Walls would show  
 15 up and he hired him again as he still needed him as there were not enough skilled workmen in the areas where these two projects were located. After he would put Walls back to work, he would be okay until a month or so later when he would start no showing again. On numerous occasions Walls would show up at work smelling like a brewery. Walls did not drink on the job but would ice his beer up at lunch so it would be cold at quitting time when he would take out the beer and drive off. The next morning  
 20 (Mondays in particular), he would either be late or come in reeking of beer. In May of 2002, he was Project Manager and had turned over his crew to Rymon Sparks who was made superintendent. Sparks called Carter and told him he could not put up with Walls anymore as he was doing the same thing he was doing when Carter was superintendent. Sparks said he just could not count on him. Carter told Sparks, “I leave the hiring and firing of the men up to my superintendents.” “You’ve got to do what you think’s right.” “I didn’t tell him he couldn’t or I didn’t tell him to terminate him.” On cross-examination Carter testified that he would receive reports from his two superintendents of times that Union representatives were on the job sites. Brad Walls worked with Carter  
 25 from July to December 2001 and all of his testimony with respect to Walls’ performance occurred in that period. He sent a letter in February of 2002 to various employees including Walls who had been laid off in December 2001, to return to work.

30 Respondent called superintendent Rymon Sparks as a witness in its behalf. He worked for Respondent at Our Lady of the Valley job site with about seven employees including Brad Walls, whom he had worked with before on three or four other jobs and with different companies. When he worked with Walls before Our Lady of the Valley he was a working foreman. He was promoted to superintendent when he was at Our Lady of the Valley. He had worked with Walls for three or four years and Walls was always late  
 40 a lot and laid out a lot. He supervised Walls for about five months at Our Lady of the Valley. On April 30<sup>th</sup> Walls did not show up. Walls came in on the 1<sup>st</sup> of May and when he came in, Sparks told him in the presence of employees Phil Sparks (his brother), Ray Kelley and Roy Adding that if he laid out any more he would be terminated. Walls responded that he could handle that and Sparks turned around and told him, “Now Brad,  
 45 you can take that to the bank and bank on it.” “Lay out any more, I’ll fire you or terminate you.” Sparks identified Respondent’s Exhibit Number 7, which is a daily log



that he is required to keep each day. He completed this log and it is dated. The log contains the names of the Respondent's employees who were working that day. He also fills out the weather information for each day. This log is for April 30<sup>th</sup> and Walls name is not listed on it, which indicates that Walls did not work that day. The log also indicates it was raining that day. Rain may mean a fine mist to a hard rain. They work on a lot of days when it says rain. He has told the employees that if it is raining when they wake up in the morning, they should come in as they might work and at least they will get a couple of hours of work. If an employee knows he will miss work they are to call him and let him know. He has given them his cell phone number and they had another line at the jobsite, which they no longer have as the job has been completed.

Brad Walls did not call in on April 30 and tell him he wasn't coming to work. On the second page of Exhibit 7, it shows that Walls was at work on May 1<sup>st</sup>. The third page of Exhibit 7 shows that Brad Walls was not at work on May 16, 2002. Walls did not call in and tell him he would not be in that day. Nor did he tell him he had a sinus headache. Walls and employee Donald Simms rode to and from work together. When Simms came into work by himself on May 16<sup>th</sup>, Sparks asked Simms where Walls was. Simms replied he did not know. Sparks said, "Well, when you go home today and you see Brad, you tell him that he's terminated. That he can come by Friday and get his check." The daily log shows that Simms was at work on the 16<sup>th</sup> and Walls was not. Walls called later on May 17<sup>th</sup> and asked Sparks if he would give his check to Simms. Sparks agreed. In that conversation Walls said that Sparks had just wanted to get rid of him. Sparks told him it's "not that. You just don't show up to work." Approximately a week after Wall's termination, Sparks terminated employee Bruce Hill for "laying out and coming in with the smell of alcohol on his breath."

Sparks recalls one occasion when he left the job site for about fifteen minutes. When he returned his brother Phil Sparks told him the Union representatives had been on the job and left during his brief absence. Sparks testified further that he had never said anything or questioned any of his employees, including Walls, about the Union or their union activities. The aforementioned occasion when the Union representatives came out to the job site was the only time that they came to the job site that he is aware of. He has no idea who they talked to. He never observed Walls wear any union tee shirts, pins or hats or anything like that.

The Respondent called Ray Kelley as a witness. Kelley is employed as a laborer by Respondent, who worked for Rymon Sparks on the Our Lady of the Valley job site. He testified that Walls was late to work for a variety of reasons. He heard Rymon Sparks tell Walls in May that if he was late again, he was going to be fired. He does not recall what Walls said.

The Respondent called Phil Sparks (the bother of Rymon Sparks) as a witness. Sparks is employed as a carpenter/operator and held this position during the Union organizing effort at Respondent. He was approached by Union representatives at the job site. The superintendent (his brother) had gone to builder's supply. A Union representative came up and asked Phil Sparks if he was interested in a union. He replied

that he was not. Brad Walls was there also and the Union representative and Walls said hello. The Union representative handed Sparks a pencil. The Union representative spoke, walked around a little and then left. He never saw Walls promoting the Union, discuss meetings, wear Union insignia or otherwise. Walls was late to work “at least one  
5 time a week, if not more.” He was sometimes late just a few minutes, sometimes thirty minutes and sometimes it might be later. One or two times a week Walls would fail to show up for work and fail to call in. He recalls Rymon Sparks telling Walls that if he came in late or laid out again, there was no need for him to come back.

Respondent called Peggy Patterson in its case. Patterson is Respondent’s bookkeeper and files and processes the Workmen’s Compensation accident claims. She takes employees’ statements and refers them to Occupational Health Services for treatment, which is the medical service provider that Respondent’s insurance company has recommended they use. Occupational Health Services has on file a requirement that  
15 each person injured be tested for drugs. This has been done on the recommendation of Respondent’s workmen’s compensation insurance carrier. This drug testing policy in workmen’s compensation cases was initiated in the latter part of 2000. A number of employees have been tested since. There have been only a few positive tests indicating illegal drug use. When Patterson receives notice of a job injury, it generally comes from  
20 the job superintendent who asks where the employee should go for examination and treatment. She prepares a statement from the employee called Employer’s First Report of Injury or Occupational Disease. Respondent’s Exhibit 1 is a First Report of Injury form which she filled out for Dan Manuele. The date of the injury was April 4 and the report was not filled out until April 8<sup>th</sup> because Manuele did not believe it was a problem. He  
25 thought it was just a back sprain but after the weekend he decided he needed to go to the doctor, and she had not been called prior to this. After Manuele called, she processed the First Report of Injury form and sent Manuele to Occupational Health Services. She received a telephone call from a lady named “Peaches” at Occupational Health Services who informed her that Manuele’s drug test showed signs of marijuana and  
30 amphetamines. She reported this to Bobby Lee. Other employees have tested positive for drugs. Employee John Tillis tested positive and she informed Bobby Lee of this. She does not know what action, if any, that Bobby Lee took with respect to Tillis. This is not part of her job. She informs him and does not know what happens after that. She also recalls employee Curtis Brown tested positive. She reported this to Bobby Lee. Several  
35 years prior to late 2000 when Respondent implemented a drug testing procedure for injuries, Respondent had a drug testing policy wherein Respondent could test someone if deemed necessary. Respondent does not have or maintain any files that relate to drug testing for other than occupational injuries.

Respondent called Christopher “Sean” Lee who is the grandson of Jack Lee the nephew of Bobby and Bruce Lee and the son of Jeff Lee. Sean Lee is employed as a job site superintendent at the Hazel Green First Baptist Church and had been on that project for about a year as of the date of the hearing in this case. He supervised Gary Watkins in  
40 April and May. He has never seen Gary Watkins wearing a Union tee shirt or any type of Union insignia. He has never told Watkins or any other employee not to wear Union clothing. He has never asked Watkins or any other employees about the Union or about

their Union affiliations. Watkins and he were eating lunch together and Watkins told him that the next day (Thursday) would be his last day as the Union had called him to go back to another job. Watkins said, “Thanks for the job.” They parted amicably.

5 Sean Lee specifically denied that he had ever told Watkins that he could not wear a Union tee shirt to work. He denied having had a conversation with Watkins wherein Watkins had said in response that he did not have another shirt to wear and denied that he (Sean Lee) had replied, “Just don’t wear it anymore.” On the day after Watkins gave his one-day notice, the office called Sean and said they had a complaint that he had said  
10 something about the clothes Watkins was wearing and that Sean had made Watkins take his shirt off. He went to Watkins and asked what this was about. Watkins told him he didn’t know what Sean was talking about.

15 Sean also testified about an occasion when Bruce Lee came and spoke at his job site. Bruce said the Union was trying to come in and win the votes. Bruce said Respondent did not want to be a Union company and said he had people who had answers and to make sure what you were signing before you signed it. Bruce did not say the company would close its doors if the Union came in or anything like that.

20 Respondent called Bruce Lee as a witness. Bruce is a Vice President, Project Manager and Owner of Respondent. He went to three different jobsites after the start of the Union organizing drive. He told the employees he had heard of the Union activity from some of the employees and that Respondent was “opposed to the Union coming in and trying to take over our company.” He told them that “if the Union did come in and  
25 take over our labor force, that it would hurt our chances of getting competitive jobs and I felt like it could . . . create problems for us doing the type of project that we’re doing.” He said that he felt that the owners they work with would probably rather use a non-Union type set up. He told them he was not there to tell them how to vote and to feel free to ask any questions and if he did not know the answer he would try to find it out and to be careful what they committed themselves to and what they signed which could obligate  
30 them to things they were not aware of. He did not say or imply that Respondent would shut down or close its doors. He told them there were responsibilities and fees associated with joining the Union and that the Union could create problems with job sites.

35 Bobby Lee was recalled to the stand by Respondent. When he went to talk to Chris Hughes about the Union, Hughes said he had been wanting to talk to him as the Union had been asking him to hold a cookout or barbeque for the employees. Once he heard Bobby Lee’s views he said, “Well if you all are not for it, I’m not for it. If I  
40 wanted to be in the Union, I could go back to Georgia.” Lee had told him that he had heard the Union was talking to the employees and thought they were hearing a one-sided story and should hear his opinion. He told him he did not want to be associated with the Union and felt there was a potential of it hurting our competitive edge and that he did not think a lot of the owners would want it. He did not ask Hughes where he stood on the  
45 Union. In the conversation with Jason Alger regarding the Sunday night he called to tell Hughes he would not be working any more, he said something similar to “I can’t deal

with this “shit.” He was terminating Hughes for not having shown up on the day (Saturday) before. Bobby testified that Manuele’s testimony that he handed Bobby a pencil with the Union’s name on it and that he asked Manuele questions about it and whether the Union had come to the job site and how he felt about that, is totally false. He did not find out that Manuele was claiming to be a Union supporter until two days after he was denied unemployment benefits, which was about a month after he terminated him.

Analysis

Upon close review as directed by the Board I have carefully scrutinized the testimony of all the witnesses who testified in this case and have carefully reviewed the exhibits received in evidence. My review convinces me that the findings of the Section 8(a)(1) violations should be reaffirmed and stand. However on review I find that the Section 8(a)(3) allegations with respect to the discharges of employees Chris Hughes, Brad Walls and Dan Manuele should be dismissed. In my initial decision I credited the testimony of Hughes, Walls and Manuele regarding the Section 8(a)(1) allegations. My review of the record in this case convinces me that these rulings should stand.

Under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1<sup>st</sup> Cir. 1981), cert. denied 455 U.S. 989 (1982) the General Counsel has the initial burden to establish that:

1. The employees engaged in protected concerted activities.
2. The Respondent had knowledge or at least suspicion of the employees’ protected activities.
3. The employer took adverse action against the employees.
4. A nexus or link between the protected activities and the adverse action underlying motive.

Once these four elements have been established, the burden shifts to the Respondent to prove, by a preponderance of the evidence that it took the action for a legitimate nondiscriminatory business reason. In the instant case I found that all three employees signed union authorization cards. I found that Hughes was questioned by Vice President Bobby Lee and admitted he was considering hosting a barbeque on behalf of the Union. I found that Manuele was questioned by Vice President Bobby Lee and admitted having signed a union card. I found that Walls discussed the Union with other employees and told Project Manager Harold Carter that he had talked to the Union representative on the job site. I found that these three employees were all engaged in union and concerted activities and that Respondent had obtained knowledge of this or at least suspicion in the case of Walls. I credited the testimony of all three employees that they had signed Union cards which testimony was un rebutted and I reaffirm this finding. I credited the testimony of Hughes concerning the inquiry of him by Bobby Lee “I understand there’s a Union campaign going on right now.” I further credited Hughes’ testimony that he had told Lee that he was considering hosting a barbeque for employees who were interested in learning about the Union. None of this testimony was denied by Bobby Lee. I also credited Walls’ testimony that Harold Carter had told the employees at

a meeting at the Our Lady of the Valley project that Respondent would shut the doors down if the Union came in. I find this testimony to be specific and credible. I do not credit the denial of Carter that he made this statement. I also credited Manuele's testimony that Bobby Lee noticed the Union logo on the pencil he borrowed from Manuele and inquired what it was and that upon being told by Manuele that it was a Union pencil, Lee then asked Manuele what he was doing with it and whether he had signed a Union card and Manuele's admission to Lee that he had signed a Union card. I found Manuele's testimony in this regard to be specific and credit it over Bobby Lee's denial and over the denial by carpenter Bill Lemon that he had overheard the conversation as testified to by Manuele.

In initially making my credibility determinations in this case, I relied on the apparent suddenness of the multiple adverse actions taken by the Respondent in discharging these employees shortly after the campaign became known to Respondent and close in time to the Respondent's efforts to defeat the Union campaign through a series of meetings held by top management officials with the employees and by Respondent's probing into the Union activities of Hughes and Manuele which resulted in their disclosure of their involvement on behalf of the Union campaign. In the case of Walls, I found and reaffirm that Respondent had knowledge that he had talked to the Union. I also credit his testimony that he asked his fellow employees if they were interested in the Union.

As the record discloses there is great disparity in the versions of the testimony of the facts as described by the witnesses. The witnesses who testified in this proceeding such as the alleged discriminatees have a stake in the outcome of this case. Respondent's owners Bobby and Bruce Lee and upper management Project Manager Harold Carter and management and supervisors Sean Lee and Rymon Sparks all have a stake in the outcome of this case. Current employees called as witnesses by Respondent have an obvious interest in supporting their employer in this case. By the above accounts of several of Respondent's witnesses such as Bobby Lee, Harold Carter, Rymon Sparks, Phil Sparks, Jason Alger, Bill Lemon among others, the poor attendance of Hughes and Walls was the deciding factor in their discharges as supported also by other alleged deficiencies in their performance. Manuele was the first employee discharged under Respondent's modified emphasis on reducing workmen's compensation claims and improving safety by drug testing employees who were involved in accidents as testified to by Bobby Lee and Peggy Patterson. If the testimony of Respondent's witnesses is believed, it is clear that Hughes, Walls and Manuele were not exemplary employees but rather had serious shortcomings justifying their discharge. However the fact that Respondent may have had valid reasons for discharging these employees does not support the ultimate determination in these cases. The inquiry is whether the Respondent had an unlawful motive proscribed by the Act for discharging these employees because of their engagement in union and concerted activities. I found in my original Decision that Respondent's motive for the discharges of Hughes, Walls and Manuel was their engagement in or perceived engagement in concerted and union activities protected under the Act thus establishing a prima facie case of a violation of the Act by reason of their discharges. I further found that the Respondent had not rebutted the prima facie case by



proving that it would have discharged these employees in the absence of the unlawful motive.

In reviewing the testimony of Respondent's witnesses I find that their testimony concerning the attendance problems of Hughes and Walls should be credited. Although I find that Respondent's witnesses were clearly attempting to bolster Respondent's position by pointing to other alleged deficiencies in the discharged employees' performance, I find credible their testimony concerning the attendance problems of Hughes and Walls which I find is also supported by the daily report of the days preceding their discharge.

With respect to the discharge of Manuele I find that the evidence supports a finding that he was discharged because of the positive result of the drug test which indicated he had used marijuana and amphetamines and which marijuana use he did not deny. I note that Respondent did not offer any supportive evidence of the change in procedure by initiating testing of employees for drug usage following accidents on the job. There was no documentary evidence produced concerning this and Respondent conceded that employees who tested positive for drugs had not been discharged in the past although Respondent has had in place a written drug testing policy which provides for discharge of employees who engage in drug usage. I note that Bobby Lee testified that the commencement of testing for drugs of an employee involved in an on the job accident had been initiated in late 2002, on the recommendation of Respondent's Workman's Compensation carrier. This testimony by Bobby Lee was supported by Peggy Patterson who also testified that it had been initiated by Respondent. I note that the only other person who had been tested and found positive after an on the job accident was John Tillis who resigned the day following his positive drug test. I note also the testimony of Patterson that an employee by the name of Curtis Brown had tested positive for drug usage. The evidence showed that he was tested following a work place injury in 2000 which was prior to the late 2002 time period that Bobby Lee testified that the Respondent began to drug test employees following an on the job accident.

On my review on remand I find that my original finding of violations of the Act by the discharge of Hughes, Walls and Manuele should not stand. In crediting the General Counsel's witnesses concerning their discharges, I had relied on the suddenness of the discharges issued by Respondent and the listing of the Respondent's witnesses of every conceivable shortcoming of Hughes, Walls and Manuele in their zeal to embellish Respondent's position. However on further review of the testimony of Respondent's witnesses, I find that their testimony should be credited concerning the reasons for the discharges. I found the testimony of Respondent's witnesses in this regard was compelling. I specifically credit the testimony of Bobby Lee that he discharged Hughes for continuing attendance problems as supported by the testimony of Alger and Gilstrap whom I found to be credible witnesses. I am convinced that Hughes had a continuing attendance problem and that this was the reason for his discharge by Bobby Lee. I do not find the testimony of Moore or Lemon concerning the incident with the cinder block had any bearing on the decision to discharge Hughes. I do note the testimony of Moore and Lemon that Hughes had attendance problems. I do credit Hughes' testimony that the inquiry by Bobby Lee about the Union occurred during the same week that he was



terminated rather than Bobby Lee's testimony that this inquiry occurred several weeks prior to the termination.

With respect to the discharge of Walls, I find that his discharge was initiated and carried out by Rymon Sparks for attendance problems. I note that the testimony of Harold Carter concerning Walls' attendance problems in 2001 was not the basis for his discharge by Rymon Sparks in 2002. Rather this serves as background for Respondent's frustration with Walls' attendance. I found Rymon Sparks to be a credible witness who testified in a straight forward and convincing manner concerning the discharge of Walls which followed his warning to Walls that he would be terminated for any further "no shows." This testimony was supported by Carter, Lemon, Kelly and Phil Sparks, whose testimony I credit in this regard. I do not credit Walls' testimony that he had not been warned by Rymon Sparks that he would be discharged for his attendance problems. Walls testified that Rymon Sparks told him, "he had been out too much and that it (his discharge) had come from higher up," and that he (Sparks had nothing to do with it." Sparks was not questioned about this alleged statement when he testified in the hearing and Walls testimony remains unrebutted in this regard. However, I do not conclude that this statement, assuming arguendo, that it was made, is indicative of any unlawful motive for the discharge. The testimony of both Carter and Sparks was compelling and it is possible that if Sparks made the statement to Walls that he was referring to Carter's testimony concerning their conversation about Sparks and that Sparks was merely trying to shift responsibility for the decision to discharge Walls. I however do not make any inference as to the motive of Sparks in discharging Walls.

With respect to the discharge of Manuele I find that Bobby Lee's discharge of Manuele was motivated by his failure of the drug test and that Bobby Lee gave him a two week notice as supported by the testimony of Bobby Lee, Lemon, Alger, Kelly and Gilstrap. I credit Bobby Lee's testimony that the discharge of Manuele was based on his failure of the drug test as supported by Patterson who testified concerning implementation of the drug tests for employees who had been involved in on the job accidents. I do not credit Manuele's testimony that his discharge came unexpectedly but find that he had in fact been given notice by Bobby Lee but had been permitted additional time to find another job. I credit former employee superintendent Wayne Wright's testimony as set out above and specifically that he did not tell Manuele that one of the reasons that Hughes was fired was because he signed a Union card.

Accordingly I find that the General Counsel has made a prima facie case in regard to the discharges of Hughes, Walls and Manuele that their discharges were motivated by Respondent's animus against the Union and its supporters. I find however that the Respondent has rebutted the prima facie cases by demonstrating that it would have discharged these three employees even in the absence of the unlawful motive. I therefore recommend that the Section 8(a)(3) allegations of discriminatory discharges of Hughes, Walls and Manuele should be dismissed.

**Conclusions of Law**

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by:

(a) Vice President Bobby Lee's interrogation of Daniel Manuele whether he had signed a Union card.

(b) Bobby Lee's interrogation of Christopher Hughes that "it's my understanding that there's a Union campaign going on right now."

(c) Bobby Lee's statement to employee Hughes that he would do everything legally possible to prevent the Company from becoming unionized, thus demonstrating the futility of the employees' support of the Union.

(d) The threat issued by Project Manager Harold Carter that the Respondent would close the doors or shut down if the Respondent became unionized.

(e) The demand by Harold Carter that employees under his supervision notify him when the Union organizers came to the jobsite, so that he could have them removed.

(f) The threats of futility of the employees' support for the Union and job loss and business closure accompanying the interrogation of employee Manuele by Bobby Lee and the employees in attendance at the meeting conducted by Harold Carter.

(g) The threats of futility of the employees' support of the Union by not being able to compete if the Respondent were unionized addressed by Bobby Lee to employee Hughes and by Vice President Bruce Lee to the employees at a meeting which he conducted in response to the Union campaign.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 8(a)(1) of the Act.

5. The Respondent did not violate the Act by its discharge of employees Christopher Hughes, Bradley Walls and Daniel Manuele.

## The Remedy

Having found the Respondent has engaged in the above violations of the Act, it shall be recommended that Respondent cease and desist therefrom and post the appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:<sup>1</sup>

## Order

The Respondent, Lee Builder's Inc., Huntsville, Alabama, its officers, agents successors and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees concerning their engagement in union and other concerted activities and those of their fellow employees.

(b) Threatening its employees with job loss, closure of the business, and the futility of their support of the Union.

(c) The Respondent shall not in any like or related manner interfere with, restrain or coerce its employees in the exercise of their rights under section 7 of the Act.

2. Take the following actions necessary to effectuate the purposes and policies of the Act:

(a) Within 14 days after service by the Region, post copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent

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<sup>1</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>2</sup> If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "**POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD**" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 2002.

- 5           (b)       Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated at Washington, D.C.

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**Lawrence W. Cullen**  
**Administrative Law Judge**

## APPENDIX

## NOTICE TO EMPLOYEES

**Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government**

10 The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

## FEDERAL LAW GIVES YOU THE RIGHT TO

15      Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities

20 **WE WILL NOT** interrogate you concerning your engagement in union and other concerted activities and those of your fellow employees.

**WE WILL NOT** threaten you with job loss, closure of the business and the futility of your support for the Alabama Carpenters Regional Council-Local 1274.

25 **WE WILL NOT** in any like or related manner interfere with, restrain, or coerce you in  
the exercise of the rights guaranteed you by Section 7 of the Act.

**LEE BUILDERS INC.**

(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

30 The National Labor Relations Board is an independent Federal agency created in 1935 to  
enforce the National labor Relations Act. It conducts secret-ballot elections to determine  
whether employees want union representation and it investigates and remedies unfair  
labor practices by employers and unions. To find out more about your rights under the  
Act and how to file a charge or election petition, you may speak confidentially to any  
agent with the Board's Regional office set forth below. You may also obtain information  
35 from the Board's website: [www.nlr.gov](http://www.nlr.gov)

**233 Peachtree Street NE, Harris Tower, Suite 1000, Atlanta, GA 30303-1531**  
**(404) 331-2896, Hours: 8 a.m. To 4:30 p.m.**

40 **THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM  
THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR  
COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS  
NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE  
5 ABOVE REGIONAL OFFICE'S

COMPLIANCE OFFICER, (817) 978-2925.